SUPREME COURT OF THE UNITED STATES.

No. 373.

RITTENHOUSE, FANT & CO., PLAINTIFFS IN ERROR,

vs.

ISRAEL DEMMING.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in certain pleas which are in the said court before you, between Rittenhouse, Fant & Co., plaintiffs, and Israel Demming, defendant, and Israel Demming, plaintiff, and Rittenhouse, Fant & Co., defendants, Nos. 1,551 and 1,607 at law, a manifest error hath happened, to the great damage of the said Rittenhouse, Fant & Co., as by their complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law of custom of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of the United States, this 4th day of June, in the year of our Lord 1866, and of the independence of the United States the 90th.

R. S. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To Israel Demming:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Rittenhouse, Fant & Co., are plaintiffs, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER, *Ch'f Justice.*

We acknowledge service of this citation June 4, 1866.

BRENT & MERRICK,
Att'ys for Deft in Error.

2 DISTRICT OF COLUMBIA, *to wit:*

As commanded by the foregoing writ of error, I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby

certify and transmit to the Supreme Court of the United States a true copy of the record and proceedings mentioned in said writ of error, with all things touching the same, which copy is hereto annexed.

In testimony whereof I have caused the seal of the said supreme court of the District of Columbia to be hereunto affixed, at the city of Washington, this 4th day of June, 1866.

[SEAL.] R. J. MEIGS, *Clerk.*

3

4 In the supreme court of the District of Columbia, March 27, 1865.

RITTENHOUSE, FANT & Co., *vs.* ISRAEL DEMMING. } No. 1,551.

The plaintiffs sue the defendant for money paid by the plaintiffs for the defendant, at his request; and the plaintiffs claim $7,647 94 cents, according to the annexed particulars of demand.

BRADLEY & BRADLEY,
DAVIDGE, *Att'ys for Pl'ffs.*

And the defendant, by his attorneys, comes and says he never was indebted as alleged.

BRENT & MERRICK,
Att'ys for Def't.

The plaintiffs join issue upon the defendant's plea.

BRADLEY & BRADLEY,
DAVIDGE, *Att'ys for Pl'ffs.*

5 In the supreme court of the District of Columbia, April 20, 1865.

ISRAEL DEMMING, *vs.* RITTENHOUSE, FANT & Co. } At law. No. 1,607.

The plaintiff sues the defendants for money received by the defendants for the use of the plaintiff; and the plaintiff claims $2,512 49 cents, according to the annexed particulars of demand.

BRENT & MERRICK,
Att'ys for Pl'ff.

And the defendants, by their attorneys, come and say that they were never indebted as alleged.

BRADLEY & BRADLEY,
DAVIDGE, *Attys for Defts.*

The plaintiff joins issue upon the plea of the defendants.

BRENT & MERRICK,
Att'ys for Pl'ffs.

6 Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court for said district, commencing the first Tuesday of February, 1866, in pursuance of the rule of court.

TUESDAY, *March* 27, 1866.

The court resumes its session according to adjournment; Chief Justice Cartter, presiding.

CHARLES E. RITTENHOUSE, HAMILTON G. FANT, Samuel Fowler, Richard Pettit, John L. Dufief, William T. Herron, and Susannah Ireland,
v.
ISRAEL DEMING. } No. 1,551.

and

ISRAEL DEMING
v.
CHARLES E. RITTENHOUSE, HAMILTON G. FANT, Samuel Fowler, Richard Pettit, John L. Dufief, William T. Herron, and Susannah Ireland. } No. 1,607.

Come as well the plaintiffs aforesaid, in No. 1,551, and defendants in No. 1,607, by their attorneys, Messrs. Bradley & Bradley and Mr. Davidge, as the said Israel Deming, by his attorneys, Messrs. Brent & Merrick, and thereupon comes a jury of good and lawful men of the District of Columbia, to wit, John P. Murphy, Charles W.
7 Pettit, Edward H. Edelin, William H. Goods, Joseph A. Gill, William O'Neale, Joseph F. Brown, Francis Ballinger, Thomas E. Jacobs, Joseph Dudley, Rodney O'Brien, and James K. Plant, who, being sworn to try the issues above joined, are respited till to-morrow morning at the meeting of the court.

THURSDAY, *April* 5, 1866.

The court resumes its session according to adjournment; Chief Justice Cartter, presiding.

RITTENHOUSE, FANT & CO.
v.
ISRAEL DEMING. } 1,551.

and

ISRAEL DEMING.
v.
RITTENHOUSE, FANT & CO. } 1,607.

And now again comes here the parties aforesaid, by their attorneys aforesaid, and the same jury, who were respited till the meeting of the court to-morrow morning.

FRIDAY, *April* 6, 1866.

The court resumes its session according to adjournment; Chief Justice Cartter presiding.

8 RITTENHOUSE, FANT & Co. *v.* ISRAEL DEMING. } 1,551.

and

ISRAEL DEMING *v.* RITTENHOUSE, FANT & Co. } 1,607.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday; and the said jury, after receiving the instructions of the court, retire to consider of their verdict, and, returning into court, upon their oath say that in the case of Rittenhouse, Fant & Co. against Israel Deming, No. 1,551, they find the issue above joined in favor of the defendant, and in the case of Israel Deming *v.* Rittenhouse, Fant & Co., No. 1,607, they find the issue above joined in favor of the plaintiff, and assess his damages, by reason of the premises, at two thousand five hundred and twelve dollars and forty-nine cents, besides costs.

9 TUESDAY, *April* 10, 1866.

The court resumes its session according to adjournment; Justice Fisher presiding instead of Justice Olin, indisposed.

RITTENHOUSE, FANT & Co. *v.* ISRAEL DEMING. } 1,551.

and

ISRAEL DEMING *v.* RITTENHOUSE, FANT & Co. } 1,607.

The said Rittenhouse, Fant & Co., by their attorney, Mr. Davidge, come and file the following:

A motion is made for a new trial in the above causes, because of the improper admission and exclusion of testimony, to which admission and exclusion exceptions were taken pending the trial, and because the general instructions given to the jury, at the instance of the counsel of the said Israel Deming, were improperly granted, and the instructions prayed by the counsel of Charles E. Rittenhouse *et al.* were improperly refused. To the granting and refusing of which instructions, so given and refused, and each of them refusing, of which instructions so given and refused, and each of them, the said Charles E. Rittenhouse *et al.*, by their counsel, excepted, as will appear by the exceptions now on file, and also because the verdict of the jury was against the evidence.

W. D. DAVIDGE,
Att'y for Rittenhouse et al.

10 *Bills of exceptions.*

RITTENHOUSE, FANT & Co.
vs.
DEMING. } No. 1,551.

DEMING
vs.
RITTENHOUSE, FANT & Co. } No. 1,607.

The above-entitled causes were ordered to be tried together, the controversy involved in them being the same and depending upon the right of Rittenhouse, Fant & Co. to charge Deming with the purchase of 400 shares of Ashburton coal stock, which was subsequently sold at a loss of $7,647 94. Deming denied that he was chargeable with such purchase, and if not charged, Rittenhouse, Fant & Co. were indebted to him in the sum of $2,512 49.

At the trial evidence was offered tending to prove that Rittenhouse, Fant & Co. were engaged in the business of bankers and brokers in Washington, D. C., and as such transacted for Israel Deming, acting by Baruch Hall, his agent in the city of New York, the various operations in gold and stocks mentioned in an account
11 offered in evidence and hereunto annexed, marked A, and that in May, 1864, the book-keeper of Rittenhouse, Fant & Co. made out a copy of said account to that date, including the purchase of the Ashburton stock, and carried said copy to said Hall, by whom the entries in said copy were examined and compared with the entries in a private book kept by him and declared to be correct; that on the 9th of March, 1864, a written order was given by said Hall, in the name of said Deming, to Rittenhouse, Fant & Co., to purchase in New York four hundred shares of Ashburton coal stock, and they thereupon telegraphed their correspondents in New York, Drexel, Winthrop & Co., bankers and brokers, to make said purchase, and that on the same day said purchases was telegraphed by said correspondents as having been made, and on the following day there was received the letter of advice from Drexel, Winthrop & Co., hereunto annexed, marked B, confirming said purchase, which letter was shown by Rittenhouse, F. & Co. to said Hall on the day of its receipt, and that on reading the same he stated that when he gave the order to purchase, he supposed the price of Ashburton coal stock was quoted as per hundred, and not per share, as stated in said
12 in said letter, but did not repudiate said purchase, nor abandon the same; and that on the same day said Hall, in the name of said Deming, gave to said R., F. & Co. a written order, produced at the trial to sell said stock, provided $32 per share could be obtained, the purchase having been made at $31¼ per share or 62½ per hundred, the shares being at their par value, $50, and that on receipt of said order, R., F. & Co. directed said sale to be made, but that it was impracticable to effect the same, as the price fixed could not be had.

That all the transactions mentioned in account A were made by said Hall in the name of Deming, said Hall holding himself as agent of said Deming, but that the latter was personally unknown to R., F. & Co.; that said Ashburton stock was with other purchases in said account ordered to be made according to what is known in the trade as on a margin; that is, the purchaser was not to pay the purchase-money of the gold or stock bought at the time of the purchase, but was to put with the broker a margin or percentage agreed on, usually 10 or 15 per cent. of the market value of such gold or stock, and that if said margin was only kept up so that the broker always had on hand the agreed margin over and above the market price
13 of the article as a security against loss, then the broker was bound to carry the article bought for a period agreed on, usually 60 or 90 days, but that the broker was not bound to carry beyond said period, but that at the end thereof the transaction was to be closed by the payment of the price thereof by the purchaser or the sale of the article, unless the broker was willing as a matter of favor to continue to carry; that if the margin agreed on was not kept up as aforesaid, the broker was at liberty on calling upon the purchaser to make good his margin, and his failure so to do, to close the transaction by the sale of the article bought, and that the profits inuring to the broker were $\frac{1}{4}$ of one per cent. for buying and the same commission for selling, and interest on the cost of the article less the margin.

That when the purchase of the 400 shares of Ashburton stock was ordered as aforesaid, and for some months before, Hamilton G. Fant was living in the city of New York, and was there engaged in buying and selling stocks on his private account, but was at the same time one of the firm of R., F. & Co., and the managing partner of
14 said firm of their business in New York; and that before the 7th of March, 1864, having heard that the books of the Ashburton Coal Co. were open for subscriptions at $25 per share of $50, and that the stock was eagerly sought and subscribed for by the best houses, subscribed on his private account for 500 shares at $25 per share, and on or before said day bought on his private account in the market 500 more shares at $30, and took the receipts representing said stock as hereinafter mentioned; that when the order to purchase was given by Hall no certificates of stock had been issued by the Ashburton Coal Company; that when stock was subscribed for $10 per share was paid in and receipts given, and that when the certificates were subsequently issued, the balance of the subscription price had to be paid up, and said receipts surrendered; that when said order was executed, said receipts, which entitled the holder to demand from the company the certificates of stock when ready for issue, were the only representatives of said stock according to the parlance and acceptation of the market and trade, and were bought and sold and quoted in the New York market as such stock; that when the said correspondents, Drexel, Winthrop & Co. received the order to
15 purchase said four hundred shares of stock, Winthrop, one of the said firm, went into the market to execute said order, and

purchased said four hundred shares of stock from said Fant at private sale, who was ignorant that said purchase was made on account of his house until he had agreed to sell the same to said Winthrop, but that said Winthrop as soon as his offer to buy had been accepted by said Fant and before any mem. of the agreement had been made or any money paid thereon, informed said Fant that he, Winthrop, was buying for his, Fant's house, and that the other members of the house of R., F. & Co. were ignorant of the fact that he held said stocks on the receipt aforesaid, and that said purchase and sale were made in good faith and at the market price, said stock selling on the 9th of March at a higher rate than that at which the same was bought for Deming; that the said receipts held by Fant were not delivered by him to Drexel, Winthrop & Co. until the 17th of March, 1864, and that certificates were not issued thereon until sometime in April,

but there was no evidence other than as herein stated tending
16 to show that by reason of the non-delivery of said receipts or non-issue of certificates the sale ordered by said Hall on the 10th of March was prevented or that any damage was sustained; that before the issue of said certificates the said Hall did not demand said stock or offer to pay the purchase-money therefor, nor order the sale thereof except at the limit aforesaid.

That said Drexel, Winthrop & Co., immediately after said sale or agreement to sell of March 9th, reported to the house of R. Fant & Co. of Washington city that the purchase had been made, and that said house of R. Fant & Co. reported to Banoch Hall, as agent of Israel Deming, that said purchase had been made and consummated, and that the fact of the non-delivery of said certificates never was reported to said Banoch Hall or Israel Deming, and was not known to the other members of R., F. & Co., and that said Winthrop, after said transaction of March 9th, and between that time and March 17th, repeatedly called on said H. S. Fant, and demanded said certificates and offered to pay for the same, and said Fant put him off from time

to time with various excuses and promises to deliver at a future
17 day.

And that said R. Fant & Co. reported to said Hall on the 10th, that said transaction was closed and consummated, and that he was bound by the same.

That said delay in the delivery of receipts and issue of certificates was not known to said Hall until long after the sale of the stock mentioned below, and after he had brought suit, nor did he know until then that the said Fant was the seller of said stock, and that down to said sale the said Hall treated the said stock as his own, and when owing to the decline in the price of the stock he was called upon to put up more margin promised, from time to time, and urged as an excuse his want of means; that on the 21st of Sept., 1864, said Hall was informed by R., F. & Co., that said stock which had been previously very low had realized the price of 17½ per share, and he was asked whether he would not sell out, he declined to fill any order in regard to the matter. That said firm of R., F. & Co. was dissolved on the 1st of Dec'r, 1864, and a new firm formed of which Fant was not a member.

and all the assets, accounts, and transactions of the old firm
18 were transferred to the new to be closed up. That said Hall failing to put up margin, the said Ashturton stock was advertised for sale by said new firm through Albert H. Nicoley & Co. auctioneers, New York, and was sold at public auction on the 15th Feb'y, 1865, after public advertisement for twenty days, a copy of which advertisement was served on said Hill, fifteen days before said sale. That at said sale said stock was purchased by said Fant at $8 per share, being the highest bid offered. That said sale was fairly conducted, and the same was made in conformity with the usage and custom in similar stock transactions, and was according to the understanding and course of dealing between the parties. Evidence was further offered tending to prove that by the usage of the trade, when a customer ordered stock to be purchased in New York on a margin, the broker in New York buying the stock had a lien on it for his advances and charges, and that it was held subject to the order of the broker here, and that whilst the particular stock purchased was not set aside and segregated from other stock of the same kind,
19 yet the broker in New York was bound to keep on hand a sufficiency of such stock to comply with an order to sell it should such order be given to deliver the same to the purchaser, he paying up the purchase money and expenses.

And evidence having been offered in behalf of Deming that said Hall was induced to give an order for said purchase of Ashburton stock by the representation of Samuel Fowler, one of R., F. & Co., to the effect that reports of sales of said stock referred to the price per cent. and not per share, and to the language of the telegram hereunto annexed, marked C, which language witnesses testified to signify the price per hundred dollars and not per share.

Rebutting evidence was thereupon offered by R., F. & Co. to show that if Fowler so stated, his representations were bona fide and innocent, and that the language of said telegram was as consistent with the signification of a price per share as per the hundred dollars, and that whilst stocks on the board in New York are quoted per cent. though the par value of the shares is under $100, yet that said Ashburton stock was not upon the board, and was sold both per
20 share and per cent.

Evidence was further offered to show that in all the transactions mentioned in account A, Deming was interested to the extent of one-third the profits and losses.

Said Deming further offered in evidence that said Rittenhouse, Fant & Co. had represented that said stock was a good investment, and that said Hall was induced to give said order to purchase for said Deming on said representations, and that after he had so given said order, said Fowler, of the firm of Rittenhouse, Fant & Co., stated that if said stock was sold at the price quoted as the price per share and not the price per hundred per cent., that the said Hall and Deming and he, said Fowler, had been laboring under an erroneous impression, and that when the said purchase of March 9th was reported to said Hall, to wit, on the 10th or 11th of March, and he was informed that

the price was per share of $50 a share and not per cent., he expressed dissatisfaction, and immediately ordered the said stock to be sold at such price as would be sufficient to save his principal harmless, and
21 relieve said principal from the liability to pay to said R. Fant & Co. their commission for purchasing, and further offered in evidence that the price of $32 per share was just sufficient for that purpose.

And the said Deming further proved in evidence by H. G. Fant, one of the firm of Rittenhouse, Fant & Co., that the gold and stock bought by said firm were not in fact taken into their possession and control, but were left in the hands of their agents in New York, in the name of said firm, subject to the lien of said agents for any balance that might be due them from said firm, and the said firm could not by their relations to said agents and to the course of dealing between them have drawn from said agents at any time the gold and stock bought in their name for account of said Deming without discharging said lien. But there was evidence tending to prove that the retention of said gold and stocks by the New York agents as aforesaid, subject to the said lien and the relators and course of dealing aforesaid, whereby said gold and stocks could not be drawn without discharging said lien, were in accordance with general usage and custom of trade in relation to such transactions.

22 And thereupon the attorney for Deming prayed the court to instruct the jury as follows:

No. 1. If the jury find from the evidence aforesaid that the order for the 400 shares of Ashburton stock, read in evidence, was obtained by and through the representations made by the firm of Fant, Rittenhouse & Co., and that said representations were false in material particulars to the knowledge of said firm, or some of the partners thereof, then it is competent for Israel Deming, in the trial of these causes, to impeach the validity of said order, unless the jury shall find from the whole evidence that the said Deming, by himself or his agents, did afterwards ratify and adopt the said order.

No. 2. If the jury believe the gold and stocks, charged in the account of Rittenhouse, Fant & Co., were ordered to be bought upon margin furnished, and for a commission to be paid them by Deming, but the said gold and stock were not in fact bought and taken by the said firm into their possession and control, but were left in the hands of their agents in New York, in the name of the said firm, sub-
21 ject to the lien of said agents for a balance that might be due to them from said firm, and that the said firm could not by their relations to said agents and the course of dealing between them, have drawn from said agents at any time the gold and stocks bought in their names for account of said Deming, then Rittenhouse, Fant & Co. cannot recover on the purchase of said gold and stocks.

No. 3. If the jury believe from the evidence that Israel Deming, by himself or his agent, directed the firm of Rittenhouse, Fant & Co., to purchase the stock in question for him, and that in attempted execution of said order one of the members of said firm sold said stock to said firm, and that the fact was not known to said Deming or his agents

that the same had been sold by a member of said firm, then said Rittenhouse, Fant & Co. cannot recover in this case, by reason of the purchase and resale of said stock.

Without the jury shall find that said purchase was made from one of the members of said firm, without design to defraud said Deming, and did not defraud and damage said Deming, and was adopted by said Deming with knowledge of the price at which it was bought.

22 No. 4. If the jury find from the evidence that Rittenhouse, Fant & Co., in attempting to execute the order of Israel Deming to purchase the stock in question on his acconnt, either directly or through their agent in New York, purchased the same from H. G. Fant on the 10th day of March, 1864; and if they shall further find that H. G. Fant was at that time a member of the said firm of Rittenhouse, Fant &. Co., and that at the time of said purchase said Fant did not possess the certificates of said stock so sold, and that the same were not under his control, and that he was not entitled to receive the same until he had made a further payment thereon to the Ashburton Coal Company, and that he did not make such further payment thereon until the 17th day of March, and did not deliver said certificates of stock to said Rittenhouse, Fant & Co. or their agent in New York until said 17th day of March, and that between said 10th day of March, 1864, and said 17th day of March, said Rittenhouse, Fant & Co. reported to said Israel Deming that said purchase of stock had been made in obedience to this order, then said Rittenhouse, Fant & Co. cannot recover in this case, unless the jury shall further find that said Deming ordered the purchase of stock, the certificates of which were not issued, and upon which there was

23 an unpaid balance due said Ashburton Coal Company before the same could be issued.

No. 6. If the jury find from the evidence that Rittenhouse, Fant & Co. reported to Deming or to his agent that they had purchased the stock in question in accordance with his order to that effect, given in evidence in this case; and that thereupon the said Deming or his agent ordered a sale thereof, and that at the time of said order to sell, neither the said stock nor any written evidence of a right to receive the same had been delivered to said Rittenhouse, Fant & Company, or their agent in New York, and was not in their possession or under their control, then Rittenhouse, Fant & Co. is not entitled to recover for any loss on the usual of said stock.

Then, and in either such case, Rittenhouse, Fant & Co. are not entitled to recover, but Deming is entitled to repudiate the Ashburton transaction, and to recover in this action what would be to his credit in account with R., F. & Co., had said transaction never been entered into. To the giving of each and every which instructions, Rittenhouse, Fant & Co. objected, but the objection was overruled by the court, and all said instructions as prayed were given to the jury, to the giving of which instructions, and each and every of them, Rittenhouse, Fant & Co., by their att'ys, except, and claim the same benefit as if each of said instructions had been severally excepted to by separate bills of exception, which benefit is allowed, and there-

upon this bill of exceptions is signed, sealed, and ordered to be enrolled this 6th day of April, 1866.

[L. S.] D. K. CARTTER,
Ch'f Justice.

24 And the att'ys for Deming further prayed the court to instruct the jury that, in the execution of the order of Deming of the 9th of March, 1864, Rittenhouse, Fant & Co. were bound to execute the same according to the signification thereof, in the language or by the usage of the trade. They executed the order in its substance, provided they purchased the stock in the condition it was to be sold. Granted.

To the giving of which instruction Rittenhouse, Fant & Co. objected by their att'ys, which objection was overruled, and said instruction given to the jury, to the giving to which instruction Rittenhouse, Fant & Co. except, and pray the court to sign, seal, and cause to be enrolled this their 2d bill of exceptions, which is done accordingly this 6th day of April, 1866.

[L. S.] D. K. CARTTER,
Ch'f Justice.

And thereupon Rittenhouse, Fant & Co., by their att'ys, prayed the court to instruct the jury as follows:

If the jury shall believe, from the whole evidence aforesaid,
25 that the def't was induced to embark in the transaction of the 9th of March, 1864, by the representations of Fowler, and the language of the telegram, marked C, from which language the def't inferred that the price of the stock was per cent. and not per share, and that said representations were made in good faith, and with no interest to deceive the def't, and that the language of said telegram was used bona fide, and with no interest to deceive, and that the pl't'ff, on the 9th of March, 1864, and upon the receipt of the order of the def't in good faith, employed competent agents in New York to execute said order, and that the certificates of stock not having been issued, the said agents purchased from Fant, one of the pl'ffs, the receipts of the company, whose stock was ordered to be purchased, which receipts were bought and sold in the stock market of New York, where said order was to be executed as the only representation of such stock, and passed as such stock according to the parlance and acceptation of said market and trade, and authorized the holder to receive said certificates when the same should be issued, and that at the time of said purchase said Fant was dealing in stocks in his own account, and was ignorant that the said pur-
26 chase was made on account of the house, of which he was a member; and that said house was ignorant that Fant was a holder of said stock, and that said purchase was made at the current market rate, and that said receipts were not delivered for several days, and certificates were not issued until day of April, and that on the 10th of March, the pl'ff ordered a sale of said stock, provided 32 per share could be obtained, and that said sale was not

prevented by reason of non-delivery of said receipts, or the non-issue of said certificates, nor was any damage sustained by the def't by reason thereof, and that before the issue of said certificates, the def't did not demand said stocks and offer to pay the purchase money therefor, nor order the sale thereof except at the limit aforesaid, and that said purchase was reported by the pl'ffs to the def't upon said receipt of the letter of advice from said agents in New York; and that the def't thereupon objected that he had supposed the price of said stock as reported in said telegram was per cent. and not per share; but the def'ts did not repudiate said purchase and abandon the same, but on the other hand, treated the same as his own, and that by the custom of the trade the pl'ffs had a lien
27 upon said stock for advances made in behalf of the def't for the purchase or carrying the same, and were authorized to sell said stock, if the custom, buying on a margin, failed to keep up his margin; and that, after the margin of the def't was exhausted, the pl'ffs called upon him for more margin, which he failed to put up, and that thereupon said stock was sold at public auction by the agents of the pl'ffs, and after fifteen days' notice to the def't, and that said sale was fairly made, and said stock was purchased thereat by said Fant, and that after applying the proceeds of said sale to the debts due the pl'ffs by the def't, there was left a balance, then for such balance the pl'ffs are entitled to recover.

Which instruction the court refused to give, to which refusal said Rittenhouse, Fant & Co. except, and pray the court to sign, seal, and cause to be enrolled this 3d bill of exceptions, which is accordingly done this 6th day of April, 1866.

[SEAL.] D. K. CARTTER,
Ch'f Justice.

28 *4th bill of exceptions.*

And thereupon Rittenhouse, Fant & Co. prayed the court to instruct the jury:

1. If by the understanding of the parties or the course of dealing the order of the 9th of March, 1864, was to be executed, not by Rittenhouse, Fant & Co., but by sub-agents in the city of New York, and if Rittenhouse, Fant & Co., in the selection of said sub agents exercised due care and diligence, then they are not responsible for the default or negligence of such sub-agents.

2. If from the whole evidence aforesaid the jury shall find that the transaction of the 9th of March, 1864, was according to the understanding of Rittenhouse, Fant & Co. and Deming, a mere speculation in which Deming was to receive any profit which might accrue from the rise of the stock in the market, and that as the order of that date was executed the said advantage was substantially secured to Deming, then said Deming cannot repudiate said transaction, but is bound thereby and responsible for the advances made therein by Rittenhouse, Fant & Co.

3. If the jury shall believe that when the purchase of said

stock was made the certificates, had not been issued and that the right to demand said certificates had not been issued, and that right
29 to demand said certificates as soon as they could be conveniently issued was secured by said purchase, and that said stock before the issue of said certificates was the object of purchase and sale, the right to call for said certificates standing in lieu of the certificates themselves, then said purchase was not a substantial departure from the order of the 9th of March, 1864.

4. If the jury shall believe that the delivery of the certificates of stock to said agents was delayed for several weeks, the latter becoming responsible therefor in the meantime, and that before such delivery Deming ordered the sale of said stock at $32 per share, and that said sale was not prevented by such non-delivery, and that before such delivery Deming never demanded said certificates and offered to pay the advances made on account of Rittenhouse, Fant & Co., nor ordered a sale of the stock, then such failure to deliver furnished ground for the repudiation of said purchase.

5. That the fact that what passed as Ashburton stock in the New York market was sold by Fant, one of the firm of Rittenhouse, Fant & Co., to Drexel, Winthrop & Co., the agents employed to execute the order of the 9th of March, 1864, said Fant being a dealer
30 in stocks on his private account, and said agents, as well as his firm, being ignorant that he held said stock, and he being ignorant that the sale was made to fill the order of his house and the sale being at the current market price, does not authorize Deming to repudiate said sale.

And thereupon the court refused to give the instructions, aforesaid, numbered 1, 4, and 5, or either of them, and gave the instructions numbered 2 and 3. with the following qualification: "Provided Rittenhouse, Fant & Co. purchased and held for the benefit and control of Deming the stock in question by as good title as the subject of the purchase permitted," and thereupon Rittenhouse, Fant & Co. except to the refusal to give said instructions prayed or either of them, (numbered 1, 4, and 5,) and also to the refusal to give the prayers numbered 2 and 3 without the qualification attached, and claims the same benefit of exception as if the objection to granting of each of said prayers with said qualification separately excepted to by separate bills of exception, which benefit is allowed and therefore this 4th bill of exceptions is signed, sealed, and enrolled this 6th day of April, 1866.

[L. S.] D. K. CARTTER,
Ch'f Justice.

31 *5th bill of exceptions.*

And thereupon Rittenhouse, Fant & Co. further prayed the court to instruct the jury:

That if the jury shall believe from the whole evidence that Hall was a partner of Deming in the transactions embraced in the suit of the latter against Rittenhouse, Fant & Co., as such was beneficially

interested in said transactions and the profits thereof, then Deming is not entitled to recover in said suit; which instruction the court refused to give as prayed, but gave the same with the following qualification: "If the jury shall find from the evidence that the contract in the premises was made exclusively with Deming, in which Hall was unknown as a contracting party, then the said Deming may recover, although it shall appear in the testimony that said Hall had a resulting interest in the contract," and to the refusal to give said instruction as prayed, and to the giving the same with said qualification, Rittenhouse, Fant & Co. except, and pray the court to sign, seal, and cause to be enrolled, this their 5th bill of exceptions, which is accordingly done this 6th day of April, 1866.

[SEAL.] D. K. CARTTER,
Ch'f Justice.

32 *6th bill of exceptions.*

And thereupon Rittenhouse, Fant & Co. further prayed the court to instruct the jury:

That there is no evidence in the court tending to show any express contract in support of the allegations in the declaration of Deming against Rittenhouse, Fant & Co., and in the absence of such evidence said Deming cannot recover if the jury find that Hall was beneficially interested as partner in the cause of action of said Deming, which instruction the court refused to grant as prayed, but instructed the jury as follows:

That if the jury shall find that there is no evidence in the case tending to show any express contract in support of the allegations of Deming against Rittenhouse, Fant & Co., and in the absence of such evidence said Deming cannot recover if the jury find that Hall was beneficially interested as partner in the cause of action of said Deming, to the refusal to give which instruction as prayed, and to the the giving of said substitute therefor, Rittenhouse, Fant & Co. except, and pray the court to sign, seal, and cause to be enrolled this 6th bill of exceptions, which is accordingly done this 6th day of April, 1866.

[L. S.] D. K. CARTTER,
Ch'f Justice.

DR. *Israel Deming, esq., in account with Rittenhouse, Fant & Co., Washington, D. C.* CR.

1863.				
Aug.	10.	To	5,000 gold, 129⅝ 1	$6,493 75
		To	50 Hudson, 152 ..... 3	7,612 50
	13.	To	100 Harlem, 146 ..... 10	7,312 50
	14.	To	50 P. Du Chien, 86½ 14	4,337 50
	17.	To	50 Ft. Wagner, 83 ..... 15	4,162 50
	18.	To	50 N. Y. Cat., 133⅝ 17	6,693 75
Sept.	1.	To	100 Toledo, 116 ..... 18 Aug ...	5,812 50
		To	50 Galena, 111 ..... 21	5,562 50
		To	100 Harlem, 175¾ 22	8,800 00
		To	50 Canton, 32¾ 26	1,650 00
		To	50 Harlem, 169½ 26	4,243 75
		To	50 Galena, 111¾ 27	5,600 00
		To	100 Mich. so, 108⅞ 31	10,912 50
	2.	To	50 Hudson, 154 ..... 1	7,712 50
	16.	To	50 Harlem, 147½ 9	3,681 25
		To	50 Ills. Cou't, 127½ 9	5,887 50
		To	50 Ft. Wagner, 77½ 14	3,887 50
		To	50 Ft Wagner, 78 ..... 14	3,912 50
	9.	To	100 Ft. Wagner, 80½ 5	8,075 00
Oct.	8.	To	Check	165 93
	12.	To	100 Marietta 1st, 67½ 6	3,387 50
		To	150 Marietta 2d, 47½ 6	3,581 25
		To	100 Marietta 1st, 65 ..... 6	3,262 50
		To	50 No. West, 41¾ 7	2,100 00
		To	100 Miss. & Mo., 37½ 8	3,775 00
		To	100 Ft. Wayne, 86¾ 9	8,700 00
	23.	To	100 Cumberland, 35½ 20	3,575 00
	24.	To	100 Erie, 109⅝ 22	10,987 50
Nov.	7.	To	10,000 gold, 156¾ ..... 15 Oct....	15,700 00
	12.	To	150 Marietta 1st, 72½ 9	5,456 25
	16.	To	100 Ft. Wayne, 83⅞ ..... 21 Sept....	8,412 50
	19.	To	50 Mich so., 86¾ ..... 3 Oct.....	4,350 00
Dec.	4.	To	100 Rock I., 108⅜ ..... 23 Nov....	10,862 50

1863.				
Aug.	1.	By	cash	$500 00
	4.	By	cash	125 00
	7.	By	cash	275 00
	10.	By	5,000 gold, 127⅝ 3	6,368 75
	11.	By	cash	300 00
	13.	By	100 Harlem, 147 ..... 12	7,337 50
	17.	By	50 Du Chien, 87 ..... 15	4,337 50
	18.	By	50 Ft. Wayne, 90½ 17	4,512 50
		By	50 Hudson, 149¾ 17	7,475 00
Sept.	1.	By	50 N. Y. cou't, 131½ ..... 20 Aug.	6,562 50
		By	50 Toledo, 114½ 20	2,856 25
		By	100 Harlem, 178½ 25	8,912 50
		By	50 Galena, 114 ..... 25	5,687 50
		By	50 Harlem, 169 ..... 29	4,218 75
		By	50 Canton, 327⅛ 29	1,631 25
		By	50 Galena, 112 ..... 29	5,587 50
	9.	By	50 Hudson, 147 ..... 2	7,337 50
	2.	By	50 Toledo, 114½ 20	2,856 25
		By	100 Mich. so., 108½ 1	10,800 00
	3.	By	cash	250 00
	16.	By	100 Ft. Wayne, 85½ 9	8,525 00
		By	50 Harlem, 140 ..... 11	3,493 75
		By	50 Ills. cou't, 124½ 11	5,700 00
	17.	By	100 Ft. Wayne, 81¼ 16	8,125 00
Oct.	12.	By	200 Marietta 1st, 71 ..... 7	7,075 00
		By	150 Marietta 2d, 50½ 7	3,768 75
		By	50 No. West'n, 41 ..... 8	2,037 50
	23.	By	100 Miss. & Mo., 36 ..... 16	3,575 00
		By	10,000 gold, 149⅝ 17	14,937 50
	24.	By	100 Cumberland, 36⅝ 22	3,639 50
Nov.	7.	By	50 Fort Wayne, 84¾ ..... 15 Oct.....	4,225 00
		By	50 Fort Wayne, 84½ 15	4,212 50
	9.	By	cash	750 00

DR. *Israel Deming, esq., in account with Rittenhouse, Fant & Co.*—Continued. CR.

1863.						
Dec.	23.	To	100 Ft. Wayne, 86¼ 17	$8,675 00		
1864.						
Jan.	6.	To	100 Galena, 106¾ ..... 17 Sept. ...	10,700 00		
			Amo't carr'd forward	216,040 93		
			To amount bro't forward, ...	$216,040 93		
	12.	To	700 gold rec'd			
	28.	To	Note and int	502 75		
Feb.	1.	To	50 Mich. cau't, 133¼ ..... 27 June ...	6,675 00		
	11.	To	300 Reading, 119¾ 9	18,000 00		
	24.	To	150 Mich so., 94 ..... 5	14,137 50		
Mch.	4.	To	100 N. Y. cau't, 133⅝ ..... 16 Feb.	13,387 50		
	7.	To	100 cau't Am. transit, 47 .... 1	4,725 00		
	21.	To	100 Mich. so, 108½ 14	10,875 00		
	26.	To	100 Miss. & Mo., 54⅞ 18	5,500 00		
Apl.	1.	To	100 Mich. so, 117½ ..... 28 Mch. ...	11,775 00		
Mch.	24.	To	100 Wyoming, 105 ..... 7	5,262 50		
	24.	To	400 Ashburton, 62½ 18	12,600 00		
Apl.	26.	To	10,000 gold, 171 ..... 18	17,125 00		
May	31.	To	100 Ft. Wayne, 98¼ ..... 27 Feb. ...	9,875 00		
		To	100 Quicksilver, 88½ ..... 31 Mch. ...	8,850 00		
		To	1,000 Ohio & Miss. cts., 49 ... 7	4,925 00		
June	6.	To	Transfer balance to debit from individual ledger	100 00		
		To	Interest to 4th June	680 71		
		To	Telegraphing	103 83		
			Com. 1 p.c. for carrying 400 Ashburton for month May	200 00		
			On hand at close of this ac., 400 Ashburton, 700 gold, (rec'd 12th Jan., '64)			
				361,340 72		

1863:						
Nov.	30.	By	100 Galena, 107 ..... 18 Sept.		$10,675 00	
Dec.	26.	By	100 Rock I., 109 ..... 16		10,875 00	
			Amo't carr'd forward		179,543 75	
1864.						
			By amount bro't forward, ...		$179,543 75	
Jan'y	6.	By	100 Ft. Wayne, 84¾ ..... 5 Oct.		8,450 00	
		By	50 Mich. so., 89½ 5		4,500 00	
	30.	By	100 Ft Wayne, 89 ..... 18		8,875 00	
Feb'y	11.	By	150 Mich. so., 93½ 9		13,950 00	
	24.	By	100 Erie, 108⅝ 5		10,837 50	
		By	50 Mich. cou't, 136 ..... 5		6,787 59	
Mch.	4.	By	100 N. Y. cou't, 134¾ ..... 26 Feb.		13,450 00	
	8.	By	100 Ft. Wayne, 100¼ 29		10,000 00	
	10.	By	200 Reading, 123⅝ 15		12,337 50	
		By	100 Reading, 123⅝ 15		6,168 75	
	23.	By	100 Mich. so., 108½ 17		10,825 00	
	30.	By	100 Miss. & Mo., 63½ 25		6,300 00	
Apl.	12.	By	100 Quicksilver, 90 ..... 4		8,975 00	
	26.	By	10,000 gold, 167½ 20		16,762 50	
		By	100 Mich. so., 101 ..... 18		10,075 00	
Mch.	19.	By	50 cou't, a transit, 47 ..... 7		2,337 50	
		By	50 cou't, 47 ..... 7		2,337 50	
		By	100 Marietta 1st, 81 ..... 7		4,037 50	
		By	50 Marietta, 81 ..... 7		2,018 75	
		By	10,000 Ohio & Miss, 50 ..... 9		4,975 00	
		By	100 Wyoming, 104½ 9		5,212 50	
June	4.	By	4 p.c. div'd on 100 Erie, ...		400 00	
		By	3 div'd on 150, Marietta		225 00	
		By	balance		11,959 47	
					361,340 72	

1864.				1864.			
June	6.	To balance	$11,959 47	Dec. 14.	By	Jac., H. G. Fant	$50 96
Dec.	13.	To interest to 12th Dec., '64	370 74	1865.			
1865.				Feb'y 16.	By	400 Ashburton, 8.....15.....	3,200 00
Feb'y	16.	To interest to 15th Feb'y, '65	115 13		By	700 gold, 205¼.....15.....	1,440 25
		To expenses of sale Ashburton and gold	49 48		By	com. chg'd 6 June, '64, for carrying Ashburton remitted	200 00
Mch.	22.	To interest to date	44 35	Mch. 22.	By	balance	7,647 94
			12,539 17				12,539 17
1865.							
Mch.	22.	To balance	$7,647 94				

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40 *Exhibit B.*

BANKING HOUSE OF DREXEL, WINTHROP & Co.,
No. 40 *Wall Street, New York, Mar.* 9, 1864.

Messrs. Rittenhouse, Fant & Co.:

GENT.: We have purchased for your acct. this day—
400 Ashburton coal, R. F., & Co., *a* 31¼.
50,000 Ohio and M. Ctfs., Livermore C. & Co., 50 R.
100 Hudson R. Fitzhugh & J., 152 B, 3.
And have sold your acct.—
10,000 Ohio & Mi. ctfs. L. C. & Co., *a* 50 R.
100 Quicksilver, R. M. Martin, 64½ B. 3.
300 Erie, W. T. Henderson, 121 R.
200 Erie, Halgarten & H., 121 R.

Resp'y,
DREXEL, WINTHROP & CO.
Per REILLY.

This stock is $31¼ per share, 62½ acct.
We have purchased in additional for your acct.—
200 Ft. Wayne, B. & Mulford, *a* 129.
And have sold—
100 Wyoming coal, Jandon & Sons, 104½ R.

41 *Exhibit C.—Telegram.*

15 Ex.

To R. F. & Co.:

Bought four hundred (400) Ashburton coal; thirty (30) Mr. Hellen. I will take hundred, (100,) if he declines. One (1) bid. Wayne, seven half, (7½.)

FANT.

20. Call 103.
Dated N. Y., Mar. 9, 1864.

42 Proceedings before the supreme court of the District of Columbia, holding a general term, commencing the first Monday of May, in the year 1866:

MONDAY, *May* 7, 1866.

The court commences its session in pursuance of the rule prescribing the times of holding the general term. Present: Justices Olin, Fisher, and Wylie; absent: Chief Justice Cartter.

RITTENHOUSE, FANT, & Co.
vs.
ISRAEL DEMING. } Law, 1,551.

ISRAEL DEMING
vs.
RITTENHOUSE, FANT, & Co. } 1,607, law.

And now again come here the parties aforesaid, by their attorneys aforesaid, and thereupon, because it seems to the court here that in

the record of the proceedings of the circuit court there was no error, either in the admission or exclusion of testimony, or in the instructions given or refused to be given to the jury, therefore it is considered by the court that the motion of Rittenhouse, Fant, & Co. aforesaid, for a new trial, be overruled, and that the said plaintiffs in No. 1,551 take nothing by said suit, and that the defendants
43 go thereof without day; and further, that the plaintiff in No. 1,607 recover against the defendants therein two thousand five hundred and twelve dollars and forty-nine cents, the damages aforesaid in manner and form aforesaid assessed, and $ for the costs of his defence in the first of said suits, and of his suit in the second, and that he have execution thereof.